

## LEGISLATIVE COMMITTEE NOTES – AUGUST 2017

POLITICAL SUBDIVISIONS INTERIM COMMITTEE	
Bill Title/Subject Matter:	Local Government Enforcement Mechanisms
Legislator(s) –Sponsor:	Sen. Daniel Thatcher
Interested Parties:	
Code Reference:	
<p><b>Description:</b> This item has been discussed at previous committee meetings. Sen. Thatcher introduced the matter. He stated that very few people spend time thinking about this complex issue and what the appropriate punishment should be when a crime is committed. Sen. Thatcher discussed the following items:</p> <ul style="list-style-type: none"> <li>• The default penalty (which is a class B misdemeanor) is a problem</li> <li>• The default should be an infraction</li> <li>• Our local governments have the authority to set penalties up to a class B misdemeanor</li> <li>• There is no support for removing the ability cities have to charge class B or C misdemeanors</li> <li>• The Misdemeanor Subcommittee of the Sentencing Commission are discussing (and Legislative Research is exploring) whether judges can waive the requirement to provide indigent defense for any crime that carries the possibility of incarceration</li> </ul> <p>Sen. Thatcher believes that the state is required to provide indigent defense. Even if this is not the case, he believes that a policy discussion regarding the issue is needed. No bill has been drafted at this time because there is no consensus among stakeholders.</p> <p><b>Meeting Materials:</b> None</p> <p><b>Audio:</b> <a href="http://utahlegislature.granicus.com/MediaPlayer.php?view_id=2&amp;clip_id=21780">http://utahlegislature.granicus.com/MediaPlayer.php?view_id=2&amp;clip_id=21780</a></p> <ul style="list-style-type: none"> <li>• Local Government Enforcement Mechanisms</li> </ul> <p><i>[Action: No action was taken, information only.]</i></p>	
AUDIT SUBCOMMITTEE OF THE LEGISLATIVE MANAGEMENT COMMITTEE	
Bill Title/Subject Matter:	A Performance Audit of Statewide Investigative Functions (Report #2017-06)
Legislator(s) –Sponsor:	
Interested Parties:	<p><b>Jake Dinsdale, Audit Supervisor</b>  <b>Major Brian Redd, Department of Public Safety</b>  <b>Attorney General Sean Reyes</b>  <b>Spencer Austin, Chief Criminal Deputy, Office of the Attorney General</b></p>
Code Reference:	
<p><b>Description:</b> Certain criminal investigations in Utah require statewide investigative authority to, for example, collaborate across jurisdictional lines, target statewide problems, and provide support to local law enforcement. In recent years, disagreements over programs and funding have led some legislators and state personnel to question the roles and functions of those responsible for statewide investigations in Utah. This audit was requested to provide information in response to these questions.</p> <p><b>Meeting Materials:</b></p> <ul style="list-style-type: none"> <li>• <a href="#">A Performance Audit of Statewide Investigative Functions</a></li> </ul>	

**Audio:** [http://utahlegislature.granicus.com/MediaPlayer.php?view\\_id=2&clip\\_id=21771](http://utahlegislature.granicus.com/MediaPlayer.php?view_id=2&clip_id=21771)

(There is no breakdown to the audio recording. The pertinent starting place for this item is 33:30)

**[Action: Sen. Niederhauser MADE THE MOTION to refer the audit to the Law Enforcement and Criminal Justice Interim Committee and the Executive Offices and Criminal Justice Appropriations Committee. PASSED]**

#### JUDICIARY INTERIM COMMITTEE

<b>Bill Title/Subject Matter:</b>	<b>Sunset Review – Administrative Office of the Courts</b>
Legislator(s) –Sponsor:	<b>Committee</b>
Interested Parties:	<b>Rick Schwermer, State Court Administrator, Administrative Office of the Courts</b>
Code Reference:	<b>§63-1-278 §78A-2-105</b>

**Description:** The committee conducted a sunset review to determine whether the section should be reauthorized for up to 10 years, with or without amendments, allowed to expire, or the sunset provision be eliminated from the statute. The Office of the Court Administrator oversees the Administrative Office of the Courts. Policy analyst, Joseph Wade, gave an introduction and Rick Schwermer explained the function and duties of the office, and answered questions. Some members of the committee felt that the institutional knowledge gained from the presentations given as a result of the Sunset Act were valuable and warranted keeping the review in the statute. The majority of the members agreed the information is useful but felt that efficiency took precedence and the committee had other opportunities to hear from the Administrative Office of the Courts—making the review unnecessary.

#### Meeting Materials:

- [Sunset Review Administrative Office of the Courts](#)
- [Sunset review –Applicable Statutes](#)
- [Sunset review questions](#)

**Audio:** [http://utahlegislature.granicus.com/MediaPlayer.php?view\\_id=2&clip\\_id=21792](http://utahlegislature.granicus.com/MediaPlayer.php?view_id=2&clip_id=21792)

- Sunset Review – Administrative Office of the Courts
- Sunset Review Questions – Administrative Office of the Courts

**[Action: Rep. Snow MADE A MOTION to open a bill file to remove the Administrative office of the Courts from the Sunset Act and make technical changes. PASSED]**

<b>Bill Title/Subject Matter:</b>	<b>Jury Nullification/Jury Instructions</b>
Legislator(s) –Sponsor:	<b>Rep. Marc Roberts</b>
Interested Parties:	<b>Patricia Owen, Associate General Counsel, Office of Legislative Research and General Counsel Timothy Lynch, Director of Project On Criminal Justice, CATO Institute Steven Burton, Utah Association of Criminal Defense Lawyers Will Carlson, Statewide Association of Prosecutors Professor Louisa Heiny, S.J. Quinney College of Law</b>
Code Reference:	

**Description:** The committee discussed the role of the jury in a criminal trial. 2017 General Session [H.B. 332](#), Criminal Procedure Revisions, as amended by the House Judiciary Standing Committee, proposed changes related to juries. This bill did not pass. Patricia Owen introduced the topic. Rep. Roberts explained the draft legislation titled “Criminal Procedure Amendments” and answered questions from the committee. Timothy

Lynch, representing himself, commented on the topic and answered questions. Sen. Weiler asked Mr. Lynch what other states allow the jury to be informed of the potential sentence if the defendant is found guilty or if any allow a jury to decide not to convict if they feel the penalty is manifestly unjust. According to Mr. Lynch there are none. Additional questions were asked and answered. Steve Burton, Legislative Chair, Utah Assoc. of Criminal Defense Lawyers, explained the criminal process and jury selection process. Louisa Heiney, assisted by a PowerPoint presentation, discussed jury nullification, procedures in other states, and potential conflicts within Utah. Will Carlson discussed the Utah Constitution and jury nullification. The draft legislation is similar to H.B. 332.

**Meeting Materials:**

- [Draft legislation "Criminal Procedure Amendments" \(2018FL-0463/004\)](#)
- [General Matrix--Criminal History Scoring](#)
- [Jury Nullification Presentation](#)

**Audio:** [http://utahlegislature.granicus.com/MediaPlayer.php?view\\_id=2&clip\\_id=21792&meta\\_id=740880](http://utahlegislature.granicus.com/MediaPlayer.php?view_id=2&clip_id=21792&meta_id=740880)

- Jury Nullification / Jury Instructions
- Patricia Owen, Associate General Counsel, Office of Legislative Research and General Counsel, introduced the topic of jury nullification and jury instructions
- Rep. Roberts explained the draft legislation titled "Criminal Procedure Amendments" and answered questions from the committee
- Draft legislation "Criminal Procedure Amendments" (2018FL-0463/004)
- Timothy Lynch, representing himself, commented on jury nullification and answered questions from the committee
- Steven Burton, Legislative Chair, Utah Association of Criminal Defense Lawyers, explained the criminal process and the jury selection process
- Louisa Heiney, Professor, University of Utah S.J. Quinney College of Law, assisted by a PowerPoint presentation, discussed jury nullification, procedures in other states, and potential conflicts within Utah

*[Action: No action was taken, information only.]*

<b>Bill Title/Subject Matter:</b>	<b>Mens Rea Reform</b>
Legislator(s) –Sponsor:	<b>Rep. Brian Greene</b>
Interested Parties:	
Code Reference:	

**Description:** Mens rea, Latin for “guilty mind,” is the mental state of an individual accused of committing a crime, as opposed to the action or conduct of the accused. Proponents of men rea reform favor strengthening mens rea requirements. The committee was short on time and this item was moved to the October meeting.

**Meeting Materials:**

**Audio:**

*[Action: This agenda item was moved to the next meeting.]*

<b>Bill Title/Subject Matter:</b>	<b>Indigent Defense</b>
Legislator(s) –Sponsor:	<b>Committee</b>
Interested Parties:	<b>Joanna Landau, Director, Utah Indigent Defense Commission Taylor Mosolf, Research and Data Analyst, Utah Indigent Defense Commission</b>
Code Reference:	<b>§77-32-804</b>

**Description:** The Indigent Defense Commission presented a report regarding the operation of the Commission

and preliminary data collected about indigent defense in the state.

**Meeting Materials:** The meeting materials are the same as the meeting materials below—under the Law Enforcement and Criminal Justice Interim Committee.

**Audio:** [http://utahlegislature.granicus.com/MediaPlayer.php?view\\_id=2&clip\\_id=21792&meta\\_id=740876](http://utahlegislature.granicus.com/MediaPlayer.php?view_id=2&clip_id=21792&meta_id=740876)

- Indigent Defense
- Joanna Landau, Director, Utah Indigent Defense Commission, assisted by a PowerPoint presentation, explained the types of data collected and data collection challenges, and answered questions from the committee.
- Utah Indigent Defense Commission Presentation
- Taylor Mosolf, Research and Data Analyst, Utah Indigent Defense Commission, discussed sources of data.

*[Action: No action was taken, information only.]*

#### LAW ENFORCEMENT AND CRIMINAL JUSTICE INTERIM COMMITTEE

<b>Bill Title/Subject Matter:</b>	<b>Indigent Defense Commission – Report on the Operations of the Commission</b>
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Legislator(s) –Sponsor:	<b>Committee</b>
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Interested Parties:	<b>Joanna Landau, Director, Utah Indigent Defense Commission Taylor Mosolf, Research and Data Analyst, Utah Indigent Defense Commission</b>
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Code Reference:	
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**Description:** Under Utah Code section §77-32-804, the Indigent Defense Commission presented a report regarding the operation of the Commission and preliminary data collected about indigent defense in the state.

**Meeting Materials:**

- [Utah Code §7-32-804](#)
- [Utah Indigent Defense Commission - 2017 Annual Report](#) The commission is now staffed. One grant has been awarded to Juab County to improve defense services. In the 2017 legislative session, Sen. Weiler sponsored [S.B. 134 Indigent Defense Commission Amendments](#) to expand the commission's authority to grant state monies to indigent defense services in both juvenile and child welfare proceedings. The bill passed.
- [Utah Indigent Defense Commission Presentation](#) Joanna Landau reviewed the history of the right to counsel, the patchwork of indigent defense systems in Utah, and Utah studies and litigation involving indigent defense. Taylor Masolf's presentation highlighted Utah indigent defense data and Taylor discussed possible data discrepancies including (1) appointment flagging data entry issues (2) attorney appearance data entry issues (3) procedural appointment issues (4) other systematic reasons (the type of cases, socioeconomic, location, etc.). IDC is in the process of untangling the data regarding these issues to determine if spending on representation is adequate, workloads are appropriate and allow for effective representation, and to fulfill auditing and grant monitoring requirements.

**Audio:** [http://utahlegislature.granicus.com/MediaPlayer.php?view\\_id=2&clip\\_id=21789&meta\\_id=740291](http://utahlegislature.granicus.com/MediaPlayer.php?view_id=2&clip_id=21789&meta_id=740291)

- Indigent Defense Commission - Report on the Operations of the Commission
- The Utah Indigent Defense Commission

*[Action: No action was taken, information only.]*

<b>Bill Title/Subject Matter:</b>	<b>Department of Public Safety Fees</b>
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Legislator(s) –Sponsor:	<b>Sen. Daniel W. Thatcher</b>
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Interested Parties:	
Code Reference:	<b>2018FL-0529/002</b>
<p><b>Description:</b> The committee was to consider proposed legislation (2018FL-0529/002) "Public Safety Fee Revisions." This item has been move to next month. Draft legislation is posted below.</p> <p><b>Meeting Materials:</b></p> <ul style="list-style-type: none"> <li>• <a href="#">Public Safety Fee Revisions (2018FL-0529/002)</a></li> </ul> <p><b>Audio:</b> None</p> <p><i>[Action: This agenda item was moved to the next meeting.]</i></p>	
<b>Bill Title/Subject Matter:</b>	<b>Crisis Intervention Teams</b>
Legislator(s) –Sponsor:	<b>Rep. Lee Perry</b>
Interested Parties:	<b>Brandy Casias, Salt Lake City Police Ron J. Bruno, Executive Director of Crisis Intervention Team Utah</b>
Code Reference:	
<p><b>Description:</b> The committee continued its discussion regarding injury and PTSD among law enforcement officers. The committee discussed best practices for crisis intervention teams. Draft legislation will be available for the September meeting. The draft legislation will include protections (possibly in the way of a certification) for team members that are involved in peer support. Rep. Perry disclosed he is a member of the Utah crisis intervention team.</p> <p><b>Meeting Materials:</b></p> <ul style="list-style-type: none"> <li>• <a href="#">CIT Presentation</a></li> <li>• <a href="#">CIT Utah Program</a>: The CIT Utah program develops and sustains partnerships between criminal justice services, behavioral healthcare services, and community members. These partnerships provide three basic services: the training of law enforcement officers and other first responders in proper methods of crisis response and resolution; developing effective crisis response systems; and advocating for accessible behavioral health services and programing. CIT Utah is primarily funded through the Utah Division of Substance Abuse and Mental Health, as well as private donations. The program is administered by a contract awarded to CIT Utah, Inc., a nonprofit corporation established specifically for this purpose.</li> </ul> <p><b>Audio:</b> <a href="http://utahlegislature.granicus.com/MediaPlayer.php?view_id=2&amp;clip_id=21789&amp;meta_id=740293">http://utahlegislature.granicus.com/MediaPlayer.php?view_id=2&amp;clip_id=21789&amp;meta_id=740293</a></p> <ul style="list-style-type: none"> <li>• Crisis Intervention Teams</li> </ul> <p><i>[Action: No action was taken, information only.]</i></p>	
<b>GOVERNMENT OPERATIONS INTERIM COMMITTEE</b>	
<b>Bill Title/Subject Matter:</b>	<b>Interstate Commission for Adult Offender Supervision</b>
Legislator(s) –Sponsor:	<b>Committee</b>
Interested Parties:	
Code Reference:	
<p><b>Description:</b> The Interstate Commission for Adult Offender Supervision is being reviewed by the committee, along with 66 other boards and committees, for effectiveness, needed changes, or whether it needs to be repealed. Jim Hudspeth, Commissioner and Deputy Administrator of the commission presented information to the committee. Mr. Hudspeth is also the director of Utah Adult Probation and Parole. <a href="#">The commission</a> was created in 1937, and its primary focus is public safety, offender accountability, and protection of victims' rights. The compact requires all 50 states and three territories to follow the same guidelines for the transfer and supervision of offenders from state to state. The commission provides training, and reviews rules and statistics.</p>	

The commission is considering combining its responsibilities with its juvenile counterpart to increase effectiveness.

**Meeting Materials:** None

**Audio:** [http://utahlegislature.granicus.com/MediaPlayer.php?view\\_id=2&clip\\_id=21781&meta\\_id=741204](http://utahlegislature.granicus.com/MediaPlayer.php?view_id=2&clip_id=21781&meta_id=741204)

- Brian Bean gave a presentation to the committee on the list of boards and commissions being evaluated by the committee.
- Jim Hudspeth, Division Director, Adult Probation and Parole, presented regarding the Interstate Commission for Adult Offender Supervision.

*[Action: No action was taken, information only.]*

#### SENATE JUDICIARY CONFIRMATION COMMITTEE

<b>Bill Title/Subject Matter:</b>	<b>Consideration of Proposed Appointment of David H. Shawcroft to the Indigent Defense Commission</b>
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Legislator(s) –Sponsor:	<b>Committee</b>
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Interested Parties:	
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Code Reference:	
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**Description:** The committee considered the appointment of David H. Shawcroft to the Indigent Defense Commission.

**Meeting Materials:**

- Utah Code Section [77-32-801](#) Regarding Indigent Defense Commission Membership
- [Governor's Letter](#)

**Audio:** [http://utahlegislature.granicus.com/MediaPlayer.php?view\\_id=2&clip\\_id=21770&meta\\_id=740898](http://utahlegislature.granicus.com/MediaPlayer.php?view_id=2&clip_id=21770&meta_id=740898)

- Consideration of Proposed Appointment of David H. Shawcroft to the Indigent Defense Commission
- David Shawcroft introduced himself.
- Sen. Weiler spoke regarding the purpose of the Indigent Defense Commission.
- David Shawcroft explained his qualifications for the position and answered questions from the committee.
- Sen. Weiler moved to favorably recommend David H. Shawcroft to the full Senate for confirmation to the Indigent Defense Commission.

*[Action: Sen. Weiler MADE A MOTION to favorably recommend David H. Shawcroft to the full Senate for confirmation to the Indigent Defense Commission. PASSED]*

*\*The Senate confirmed Mr. Shawcroft's appointment during the 4<sup>th</sup> Extraordinary Session on Aug 23, 2017.*

#### SENATE LAW ENFORCEMENT AND CRIMINAL JUSTICE CONFIRMATION COMMITTEE

<b>Bill Title/Subject Matter:</b>	<b>Pro tempore member of the Board of Pardons and Parole</b>
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Legislator(s) –Sponsor:	<b>Committee</b>
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Interested Parties:	
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Code Reference:	
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**Description:** The committee considered the proposed reappointment of Robert S. Yeates to serve as a pro tempore member of the Board of Pardons and Parole.

**Meeting Materials:** None

**Audio:** [http://utahlegislature.granicus.com/MediaPlayer.php?view\\_id=2&clip\\_id=21772&meta\\_id=740273](http://utahlegislature.granicus.com/MediaPlayer.php?view_id=2&clip_id=21772&meta_id=740273)

- Consideration of the proposed reappointment of Robert S. Yeates to serve as a pro tempore member of the Board of Pardons and Parole.

**[Action: Sen. Van Tassell MADE THE MOTION the Utah Senate approve the nomination of Robert Yeates as a pro tempore member of the Board of Pardons and Parole. PASSED]**

*\*The Senate confirmed Robert S. Yeates' appointment during the 4<sup>th</sup> Extraordinary Session on Aug 23, 2017.*

#### HEALTH REFORM TASKFORCE

<b>Bill Title/Subject Matter:</b>	<b>Medicaid Wavier Update</b>
<b>Legislator(s) –Sponsor:</b>	<b>Committee</b>
<b>Interested Parties:</b>	<b>Mr. Nate Checketts, Deputy Director, Utah Department of Health Ms. Jessie Mandle, Voices for Utah Children</b>
<b>Code Reference:</b>	

**Description:** The Task Force was briefed on the state's recent request for amendments to its 1115 waiver and amendments to the state's 1115 Primary Care Network waiver amendment requested August 18, 2016. The waiver was separated into two parts, each part to be acted on independently with the intention of getting benefits to the state as quickly as possible.

**Part I:** This part of the request included a November 1<sup>st</sup> approval date, and covers the chronically homeless, those involved in the justice system, and others needing mental health and substance use treatment. A residential treatment benefit for substance addiction was added to the request. This provision provides another option between an individual's hospital stay and outpatient treatment—strengthening the continuum of care. Language is currently being drafted for this provision. There are no enrollment caps in this part of the waiver. The definitions for eligible individuals limit enrollment to a select population. The department is confident Part I of the waiver will be approved by November 1<sup>st</sup>. However, there is no absolute commitment thus far.

**Part II:** This part includes the parent coverage (current eligible), Primary Care Network Program (PCN), and targeted adult expansion. The current federal administration offered states additional flexibility regarding Medicaid. The state proposed a list of revisions to its 1115 waiver and conducted a 30-day public comment period on these flexibilities in June and July of 2017. The following chart outlines the flexibilities the state is requesting:

	Amendment Provisions	Parent Coverage (Current and New)	PCN	Targeted Adult Expansion (New program)
1	Enrollment Limits			Request 25,000
2	Limit Eligibility to 60 Months		Request	Request
3	Work Requirement		Request	Request
4	\$25 Copay for Nonemergency ER	Request		
5	No Presumptive Eligibility	Request		Request
6	Option to Change Targeted Eligibility through Admin Rule			Request
7	No Extra Benefits for 19-20 Year Olds			Request

*\*A detailed explanation of the above chart is provided by Mr. Checketts in the audio recording (approx. 25.00).*

***The State submitted these flexibilities August 15, 2017 and requested CMS approval as soon as possible – ideally by December 31, 2017.***



**Meeting Materials:**

- [Utah's Targeted Adult Expansion for Medicaid \(Department of Health\)](#)
- [Department of Health letter to the Center for Medicare and Medicaid Services, August 15, 2017](#)

**Audio:** [http://utahlegislature.granicus.com/MediaPlayer.php?view\\_id=2&clip\\_id=21801](http://utahlegislature.granicus.com/MediaPlayer.php?view_id=2&clip_id=21801)

- Medicaid Waiver - Update

*[Action: No action was taken, information only.]*

<b>Bill Title/Subject Matter:</b>	<b>Behavioral Healthcare Coverage</b>
Legislator(s) – Sponsor:	<b>Committee</b>
Interested Parties:	
Code Reference:	

**Description:** The Task Force considered several issues related to health insurance coverage of behavioral healthcare services.

**Meeting Materials:**

- [Local Authority Mental Health Medicaid Match \(Source: Utah Association of Counties\)](#)
- [Medicaid Seeding by Counties, and State Pass-thru to Counties, for Mental Health Services \(Source: Office of the Legislative Fiscal Analyst\)](#)
- [Medicaid Consensus Forecasting \(Source: Office of the Legislative Fiscal Analyst\)](#)
- [Medicaid Spending Statewide \(Source: Office of the Legislative Fiscal Analyst\)](#)

**Audio:** [http://utahlegislature.granicus.com/MediaPlayer.php?view\\_id=2&clip\\_id=21801&meta\\_id=740400](http://utahlegislature.granicus.com/MediaPlayer.php?view_id=2&clip_id=21801&meta_id=740400)

- Behavioral Healthcare Coverage
- Local Authority Mental Health Medicaid Match (Source: Utah Association of Counties)
- Medicaid Consensus Forecasting (Source: Office of the Legislative Fiscal Analyst)

*[Action: No action was taken, information only.]*